

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BARBARA E. VARNER,

Plaintiff,

vs.

COMMONWEALTH OF PA, *ET AL.*,*Defendants*CIVIL ACTION
NO. 01-CV-01-0725FILED
HARRISBURG

JUL 18 2001

Per MARY E. DANDREA, CLERK
DEPUTY CLERK

**BRIEF IN SUPPORT OF MOTION TO DISMISS FILED ON BEHALF OF COURT
DEFENDANT, COMMONWEALTH OF PA., NINTH JUDICIAL DISTRICT**

I. FACTUAL HISTORY

Plaintiff brings this suit against the Commonwealth of Pennsylvania, Ninth Judicial District (hereinafter, "Court Defendant"), Cumberland County ("County Defendant") and two individuals, Graham and Osenkarski ("Individual Defendants"). As to Court Defendant, Plaintiff alleges violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C.A., §§ 2000, et seq., and seeks damages, including a claim for punitive damages. (Complaint, ¶47.)

The County and Individual Defendants have filed a Motion to Dismiss and Amended Motion to Dismiss raising, inter alia, Plaintiff's inability under Title VII to recover punitive damages. Court Defendant, in filing the instant Motion, joins the Motions previously filed by County and individual Defendants solely as to the inavailability of punitive damages against a government entity.

II. ARGUMENT

A. Plaintiff's Complaint, insofar as it seeks punitive damages, fails to state a claim upon which relief may be granted.

The 1991 Amendments to Title VII expressly exempts governments, governmental agencies, and political subdivisions from liability for punitive damages under Title VII. 42

U.S.C.A. §1981(a)(b)(1) as amended, upon which Plaintiff bases her right to punitive damages (Complaint, ¶ 47), specifically provides that "A complaining party may recover punitive damages under this Section against a respondent (other than a government, government agency or political subdivision). . ."

Plaintiff correctly recognizes that Court Defendant is a Commonwealth entity, stating, in her Complaint at paragraph 2:

Defendant Commonwealth of Pennsylvania, Ninth Judicial District, Cumberland County [hereinafter Court] is a district of the judicial branch of the Commonwealth of Pennsylvania....

Moreover, under Pennsylvania law, the term "Commonwealth government" includes "the courts and other officers or agencies of the unified judicial system," 42 Pa.C.S. §102.

Plaintiff has conceded, as she must, that the Court Defendant is a government entity; therefore her Complaint, insofar as it requests punitive damages, must be dismissed.

III. CONCLUSION

Plaintiff fails to state a claim for punitive damages, and that portion of Plaintiff's Complaint seeking punitive damages must be dismissed.

Respectfully submitted,



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CIVIL ACTION

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on July 17, 2001, she personally caused to be served upon the following a true and correct copy of the foregoing *Motion to Dismiss filed on behalf of Court Defendant, Commonwealth of Pennsylvania, Ninth Judicial District, and Brief in Support Thereof*, by mailing same first class, postage pre-paid, U.S. mail to:

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